

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO.: 1:22 CR 144
	)	
Plaintiff,	)	JUDGE PAMELA A. BARKER
	)	
v.	)	
	)	
DONTE FERGUSON,	)	<u>MOTION TO REVOKE ORDER OF</u>
	)	<u>RELEASE</u>
Defendant.	)	

Now comes the United States of America, by and through counsel, Michell M. Baeppler, First Assistant United States Attorney, and Scott Zarzycki, Assistant United States Attorney, and hereby files this Motion to Revoke Order of Release of Defendant Donte Ferguson, pursuant to Title 18 U.S.C. Section 3145(a)(1).

**I. Factual and Procedural Background**

While conducting an ongoing investigation into the “Heartless Felons” criminal gang, Cleveland Police Detective Matthew Zone located Instagram account “chief\_and\_commander” in September 2021. (Exhibit 1: Police Report, dated 10/28/2021<sup>1</sup>; proffered in detention hearing). This account had a user that listed their name as “1208 Goat/President.” (*Id.*). Detective Zone recognized the number “1208” and knew that it meant “Land of the Heartless,” or “LOH,” a known branch of the Heartless Felons gang. (*Id.*). Detective Zone was able to identify the user of the account as Donte Ferguson, who is also known as one of the original founders of the Heartless Felons criminal gang. (*Id.*).

---

<sup>1</sup> Although the incident occurred on March 4, 2021, it was discovered by Detective Zone in September 2021, and summarized in a report on October 28, 2021.

Detective Zone overserved a live video on the Instagram account which depicted Donte Ferguson shooting multiple firearms at the Parma Armory, located at 5301 Hauserman Road in Cleveland on March 4, 2021. (*Id.*). Detective Zone was aware of Ferguson's criminal history, including state and federal convictions. (*Id.*).

Detective Zone responded to the Parma Armory and obtained paperwork which showed Ferguson digitally signed into the facility using his real name. (*Id.*). Ferguson was also required to digitally sign a second time to enter the shooting range where he then used a false name to enter. (*Id.*). His picture was also taken at each digital sign in. The photos depict Donte Ferguson wearing the same clothes as he wore in the Instagram video while shooting guns. (*Id.*). Finally, Detective Zone identified two guns that Ferguson rented from the Parma Armory and fired at the range. (*Id.*). He also determined that Ferguson fired a third gun brought to the range by a Ms. Shalay Morris, who accompanied him. (*Id.*). Ms. Morris returned to the Parma Armory March 19<sup>th</sup>, 2021 and purchased two semi-automatic pistols. On March 22, 2021, she reported two firearms stolen from her vehicle. (*Id.*). One of the stolen firearms was the same gun she brought to the Parma Armory that was used by Ferguson. (*Id.*).

On March 31, 2022, a federal grand jury returned a one count indictment charging Donte Ferguson with Felon in Possession of a Firearm and Ammunition, in violation of 18 U.S.C. § 922(g)(1). (R. 1: Indictment). A warrant was also issued for Ferguson's arrest.

On May 19, 2022, at 11:55 a.m., Cleveland Police officers responded to a call of a male shot at 14208 Darwin, in Cleveland, Ohio. (Exhibit 2: Police report, dated 5/19/2022; submitted to the court for consideration after the hearing). There they located Donte Ferguson in the back hallway of a residence with multiple gunshot wounds. (*Id.*). Officers located six cartridge casings at 14319 Darwin. (*Id.*). They also located Ferguson's vehicle and found it had 3 bullet

holes in the driver's door. (*Id.*). At the hospital police reported that Ferguson was "extremely uncooperative, refusing to give information, and not wanting a report." Although Ferguson told police he was on Darwin to meet with a realtor to purchase a house, he would not provide the address of the house, nor would he provide the name of the realtor. (*Id.*).

After his release from the hospital, the court held his initial appearance on May 26, 2022, and ordered that he be detained until his detention hearing. On June 3, 2022, the court held a detention hearing where the government proffered the original police report (Ex. 1), which summarized the facts relating to his current federal charge, and the Pretrial Services Report which detailed Ferguson's prior convictions. At the hearing, the government argued that no condition or combination of conditions would reasonably assure the safety of the community or his appearance in court. (R. 18: Transcripts, PageID 76). The government outlined Ferguson's lengthy criminal history involving violent offenses and firearm related convictions. (*Id.*, PageID 76-77). The government described the nature and circumstances of the offense, how Ferguson illegally possessed and used a firearm, and posted his illegal activity on a public social media account with a username relating to his connection with the Heartless Felons criminal gang. (*Id.*, PageID 77-78). Finally, the government pointed out that Ferguson has failed repeatedly to abide by conditions of supervision in his prior cases. (*Id.*, PageID 78-79).

The court inquired about the circumstances regarding Ferguson being shot recently. (*Id.*, PageID). The government relayed only that the shooting had something to do with Ferguson's vehicle and that six shell casings were removed from the scene. (*Id.*, PageID 79). The report detailing the facts of the shooting was emailed to the court after the hearing but prior to a final decision regarding his detention. (Ex. 2: Police Report, 5/19/22).

Defense counsel acknowledged Ferguson's lengthy criminal history but argued primarily that Ferguson has not had any documented criminal activity since his release from prison in 2017 for his federal conviction for felon in possession of a firearm. (*Id.*, PageID 80). Defense counsel also discussed Ferguson's physical health and stable residence. (*Id.*, 80-81).

The court first found that the nature and circumstances of Ferguson's case do *not* weigh in favor of detention. (*Id.*, PageID 84). Second, the court noted that his history and characteristics were troubling, considering his long criminal history that started at a very young age. (*Id.*). The court determined however, that Ferguson had paid his debt to society for those offenses, noted he had a family a support system, appeared to have started a business, worked at a nightclub, and gave up drug abuse. (*Id.*). The court reviewed his criminal history pointing out that that his last offense was in 2014 where he was sentenced to 37 months in prison for felon in possession of a firearm, released in 2017, and removed from federal supervision sometime in 2020. (*Id.*, PageID 85). Finally, the court found that it appeared Ferguson had matured, seemed to have been law abiding for five years since his release, but was also concerned that he still associated with the Heartless Felons. (*Id.*). The court ultimately determined that it was a close call on that basis and took the matter under advisement. (*Id.*).

Following the detention hearing the courtroom deputy indicated through email that the court would be granting the defendant a bond and provided the paperwork with bond conditions for the parties' review and defendant's signature. On June 6, 2021, the court issued an order setting conditions of Ferguson's release. (R. 14: Order, PageID 61-63).

The government now respectfully requests that this Court review Magistrate Judge Henderson's determination, revoke the order of release, and order Defendant Donte Ferguson detained pending trial.

## II. Law and Argument

Pursuant to Title 18, United States Code, Section 3145, “If a person is ordered released by a magistrate, or by a person other than by a judge of a court having original jurisdiction over the offense . . . the attorney for the government may file, with the court having original jurisdiction over the offense, a motion for revocation of the order or amendment of the conditions of release.” 18 U.S.C. § 3145(a)(1).

The factors that are to be considered regarding detention are outlined in 18 U.S.C. § 3142(g):

**(g) Factors to be considered.**--The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning--

- (1)** the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a violation of [section 1591](#), a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device;
- (2)** the weight of the evidence against the person;
- (3)** the history and characteristics of the person, including--
  - (A)** the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and
  - (B)** whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and
- (4)** the nature and seriousness of the danger to any person or the community that would be posed by the person's release. In considering the conditions of release described in subsection (c)(1)(B)(xi) or (c)(1)(B)(xii) of this section, the judicial officer may upon his own motion, or shall upon the motion of the Government,

conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation, or the use as collateral, of property that, because of its source, will not reasonably assure the appearance of the person as required.

### **Nature and Circumstances of the Offense**

A review of this factor shows it does indeed weigh in favor of detention in light of all the circumstances of the offense. The facts of this case demonstrate the defendant's open disregard for the law by his continued illegal possession and use of firearms. Ferguson illegally possessed firearms in this case, but also publicly posted a video of himself firing the weapons. The account "chief\_and\_commander," on which he posted the videos, self describes the user as the "1208 Goat/President," or in other words, the greatest of all time president of what the Detective Zone reported was sect of the Heartless Felons criminal gang. (Exhibit 1: police report).

Although the court viewed the last 5 years as evidence that Ferguson has changed, his actions and his outward displays to the public suggest otherwise. Although the video was created in March of 2021, it was taken from Ferguson's "chief\_and\_commander" account as recently as September 2021. (*Id.*). And while Ferguson appeared to be the victim of a shooting on May 26, 2022 rather than the perpetrator, the fact that someone would "pop up out of nowhere" in late morning to noon hour on a residential street and fire multiple rounds into the vehicle driven by Ferguson demonstrates he is still possibly involved in retaliatory gang violence. (Exhibit 2: police report 5/19/22). When officers questioned him at the hospital about what happened, rather than assist law enforcement in their investigation, he was uncooperative and refused to provide information. (*Id.*).

### **History and Characteristics**

Defendant's history and characteristics weigh in favor of detention. Ferguson is known to Detective Zone as one of the original founds of the Heartless Felons criminal gang. Ferguson confirms that suspicion by having an Instagram account under "chief\_and\_commander" where he refers to himself as the greatest of all time president of a Heartless Felons sect. Detective Zone reported that members of the gang have been directly involved in committing Murder, Aggravated Robbery, Felonious Assault, Weapons Offenses, Drug Trafficking, and Money Laundering. (Ex. 1: Police Report). In the report detailing the current offense, the name of the staff member at Parma Armory who assisted law enforcement was kept anonymous due to Ferguson's history of retaliation and members of the Heartless Felons being known to target witnesses and victims. (*Id.*).

Ferguson's criminal history began when he was a juvenile with convictions for Aggravated Robbery and Felonious Assault between 1997 and 2001. (Pretrial Services Report). His criminal offenses continued into adulthood on July 18, 2007 with a conviction for Receiving Stolen Property of a Motor Vehicle. He was sentenced to 5 years of probation and violated most terms and conditions. Also in July 2007 he was convicted separately of Having Weapons Under Disability, Carrying Concealed Weapons and Tampering with Evidence. The court imposed a sentence of probation, which he violated multiple times before being sentenced to prison for one year. In 2009 he was convicted of Failure to Comply with Order or Signal of a Police Officer, Drug Trafficking with a Firearm Specification and Carrying Concealed Weapons. He was sentenced to prison for two years and was released from prison on June 1, 2012. On March 26, 2013, the defendant was convicted of Aggravated Menacing and Attempted Having a Weapon Under Disability. He was sentenced to probation and repeatedly violated the terms and

conditions of his sentence. The facts of that case revealed that Ferguson walked up to a male sitting in his vehicle and pounded on the window with the muzzle of a black handgun while he asked if the male was scared. The gun went off sending a round into the car.

On July 20, 2015, Ferguson was convicted of Felon in Possession of a firearm in U.S. District Court for the Northern District of Ohio. He was sentenced to thirty-seven months in prison and released on June 24, 2017. Within four days of being on supervision, he submitted a positive marijuana drug test.

In considering factors that weight in favor of a bond, the court appeared to put weight on the fact that Ferguson had not been in any criminal trouble since 2017. However, Ferguson has demonstrated that he has not put his criminal past behind him. He has shown that he is still associated with a violent criminal gang. He has four prior convictions of criminal offenses involving the use of a firearm or the illegal possession of a firearm. This case will be his fifth firearm offense.

### **III. Conclusion**

Based on the foregoing argument, the Government requests that this Court review Magistrate Judge Henderson's release order and find that there are no conditions or combination of conditions that would reasonably assure the safety of the community or his appearance in court.



Respectfully submitted,

MICHELLE M. BAEPPLE  
First Assistant United States Attorney

By: /s/ Scott Zarzycki  
Scott Zarzycki (OH: 0072609)  
Assistant United States Attorney  
United States Court House  
801 West Superior Avenue, Suite 400  
Cleveland, OH 44113  
(216) 622-3971  
(216) 522-7358 (facsimile)  
[Scott.Zarzycki@usdoj.gov](mailto:Scott.Zarzycki@usdoj.gov)